

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

FEB -7 2008

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

ADERSON MELRON GOOLSBY,

Appellant.

2 CA-CR 2006-0408

DEPARTMENT A

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20061064

Honorable Howard Hantman, Judge

AFFIRMED AS MODIFIED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Joseph L. Parkhurst

Tucson
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Robb P. Holmes

Tucson
Attorneys for Appellant

H O W A R D, Presiding Judge.

¶1 Appellant Aderson Melron Goolsby was charged with three counts of aggravated assault with a deadly weapon or dangerous instrument. Before trial, the court

granted Goolsby's motion for a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., on the charge involving the victim Anna Marie. The state conceded there was evidence of only simple assault as to Anna Marie, and the court submitted the case to the jury on that misdemeanor charge accordingly. On the remaining charges, which involved Anna Marie's brothers, Arnold and Murray, the court rejected Goolsby's argument that there was insufficient evidence of aggravated assault. A jury found Goolsby guilty of the assault of Anna Marie and the aggravated assault of Arnold and Murray, but it did not find the state had established the offenses were of a dangerous nature, as the state alleged. After the court found Goolsby had two historical prior felony convictions, it sentenced him to concurrent, presumptive prison terms of 11.25 years on the aggravated assault charges and to time served for the misdemeanor assault. On appeal, Goolsby contends the trial court erred in denying his Rule 20 motions on the aggravated assault charges involving Arnold and Murray, arguing there was insufficient evidence that he had used a deadly weapon or dangerous instrument in committing the assaults.

¶2 A motion for judgment of acquittal should only be granted if there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a); *see also State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990). "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Hall*, 204 Ariz. 442, ¶ 49, 65 P.3d 90, 102 (2003), *quoting State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). "If reasonable

minds could differ on the inferences to be drawn from the evidence,” the trial court should deny the motion for judgment of acquittal. *State v. Sullivan*, 205 Ariz. 285, ¶ 6, 69 P.3d 1006, 1008 (App. 2003). In reviewing the court’s ruling, we view the evidence and all reasonable inferences therefrom in the light most favorable to sustaining the ruling. *See State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005). We will not disturb a trial court’s ruling on a motion for judgment of acquittal except for an abuse of discretion. *State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 32, 154 P.3d 1046, 1056 (App. 2007).

¶3 As Goolsby correctly notes, to prove the aggravated assault charges, the state was required to establish he had assaulted the victims and had used a deadly weapon or dangerous instrument in committing the assaults. A.R.S. § 13-1204(A)(2). Goolsby argues that, because the victims’ injuries were not serious, as defined in A.R.S. § 13-105(34), the handgun he had used could not be considered a dangerous instrument—that is, one readily capable of causing death or serious physical injury. *See* § 13-105(11). He argues further that, because the state failed to introduce the gun that was used during the assaults,¹ there was insufficient evidence to support the aggravated assault conviction.

¶4 The evidence at trial established that the victims had been walking back to their apartment after purchasing beer from a convenience store when Goolsby and a woman approached them and Goolsby asked if he could have a beer. When Arnold told him no,

¹The court precluded the state from introducing a gun found at Goolsby’s residence, finding an insufficient nexus between it and the offenses.

Goolsby offered to pay for it, but again, Arnold said no. Goolsby then hit Murray with his fist and, according to both Arnold and Murray, pulled a semiautomatic handgun from his pants. Goolsby pointed the gun at Arnold and Murray, at one point directly threatening both of them with the gun. Arnold testified that Goolsby put the gun to Arnold's chest and said, "I ought to shoot you." Arnold and Murray both testified they had been afraid. Goolsby hit Arnold in the face with the butt of the gun, hit Murray in the back of the head with it, and hit Anna Marie in the mouth with his fist. Anna Marie went back to the apartment and called 911. Her brothers followed, and later all three victims were treated at a hospital for their injuries. Arnold was bleeding from his face, and Murray was bleeding from the back of his head.

¶5 Based on this evidence, the court did not abuse its discretion in denying the Rule 20 motion on the aggravated assault counts. There was substantial evidence to support the convictions under the theory that Goolsby had used the gun to commit assault under A.R.S. § 13-1203 and had used the gun, a deadly weapon, to intentionally place Arnold and Murray "in reasonable apprehension of imminent physical injury." § 13-1203(A)(2). That the gun was not introduced into evidence is immaterial. There was sufficient evidence to support the jurors' finding that Goolsby had used a gun, that he had threatened Arnold and Murray with the gun, and that the victims had believed he was going to shoot them. By threatening the victims with the gun, Goolsby committed aggravated assault.

¶6 Goolsby appears to suggest that, because he did not use the gun to shoot Arnold and Murray but used it instead as a bludgeon, he therefore did not commit aggravated assault with a deadly weapon. To the extent this is his argument, Goolsby is overlooking the separate aggravated assaults he had committed by pointing the deadly weapon at Arnold and Murray. Moreover, the jury readily could have found that the gun, as used, was also a dangerous instrument and that Goolsby committed aggravated assault by hitting the victims with it. *See* §§ 13-105(11), 13-1204(A)(2). The jury was instructed on both possible bases for aggravated assault—use of the gun either as a deadly weapon or as a dangerous instrument—and the state argued both in its closing argument. If, in fact, striking Arnold and Murray with the gun did not cause either to sustain serious physical injury, for purposes of § 13-1204(A)(1), that was a mere fortuity and does not negate the commission of aggravated assault based alternatively on the use of a dangerous instrument. *See* § 13-1204(A)(2); *State v. Schaffer*, 202 Ariz. 592, ¶ 15, 48 P.3d 1202, 1206 (App. 2002); *In re Pima County Juv. Action No. 97036-02*, 164 Ariz. 306, 312, 792 P.2d 769, 775 (App. 1990) (finding evidence sufficient to establish commission of aggravated assaults by striking child victims with belt, even accepting as true juvenile’s claim that neither victim had suffered serious physical injury; belt found to be dangerous instrument based on physician’s testimony that striking young child “could cause serious physical injury and possibly death”). The trial court did not err by denying the Rule 20 motion on these two counts.

¶7 Finally, we note that the sentencing minute entry erroneously classifies the first two offenses as “dangerous,” although the court properly sentenced Goolsby to the presumptive prison terms of 11.25 years for repetitive but nondangerous offenses. *See* A.R.S. § 13-604(D). Accordingly, we modify the sentencing minute entry to correctly classify the offenses as “nondangerous,” *see State v. Jonas*, 164 Ariz. 242, 245 n.1, 792 P.2d 705, 708 n.1 (1990), and affirm the sentences as modified.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge